

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER ROBERT WILLIAM
BERLIN, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHNNY BERLIN,

Respondent-Appellant.

In the Matter of TYLER ROBERT WILLIAM
BERLIN, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LISA FURGASON,

Respondent-Appellant.

UNPUBLISHED
August 8, 2006

No. 267532
Tuscola Circuit Court
Family Division
LC No. 04-008706-NA

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Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Respondents Johnny Berlin and Lisa Furgason each appeal as of right an order terminating their parental rights to the minor child, Tyler Robert William, under MCL 712A.19b(3)(g) and (j). We affirm.

Tyler was born April 20, 2003. When he was six months old, respondents voluntarily placed the minor child in a guardianship with his maternal grandmother because respondents did not have their own housing and were unable to care for the child by themselves. Petitioner became involved because the grandmother and Furgason had a prior history of juvenile court involvement when Furgason was a minor. The trial court took temporary wardship of the child. The child was initially placed with respondents, but was thereafter placed in foster care because respondents became too overwhelmed and frustrated to care for him, and they often asked relatives to care for him days at a time. Respondents also were not keeping up with household responsibilities, and their apartment was unsanitary.

Respondents completed Families First and other parenting classes. In November 2004, the trial court allowed respondents to have unsupervised visitation with the child in their home. In February 2005, the visitation was expanded to two-day, overnight visits. Around this time, the child began showing signs of severe distress when he returned from the visits. He was exhausted, agitated, and aggressive. He also had severe bouts of diarrhea for nearly a day following his return. Respondents unsuccessfully tried to eliminate possible physical causes of the diarrhea by diluting his juice, switching to bottled water, and getting rid of a pet iguana. Based on these events, the trial court suspended its order placing the child with respondents.

Petitioner thereafter filed a petition to terminate respondents' parental rights. Following a lengthy hearing, the trial court terminated respondents' parental rights under §§ 19b(3)(g) and (j) in a thorough and thoughtful opinion. Both respondents appeal, arguing that the trial court erred in finding that the statutory grounds for termination were established.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We give deference to the trial court's superior opportunity to assess the witnesses' credibility. *Miller, supra*. MCL 712A.19b(3)(g) and (j) provide for termination under the following circumstances:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

There was sufficient evidence to support termination of respondents' parental rights under these grounds.

Respondents failed to provide proper care for the child when he was placed with them after the termination of the guardianship. Respondents were so overwhelmed by the child's

sleep disturbances that they continually left him in the care of relatives for days at a time. Respondents completed the Families First program, but the service provider was unimpressed by their accomplishments, and she terminated the service because continuation seemed futile. After the child was removed, respondents completed parenting classes, but their instructors did not have the opportunity to observe whether they internalized their lessons. Respondent Furgason behaved inappropriately during supervised visits by screaming at the child, and respondent Berlin did not intervene. Testimony established that respondent Furgason is prone to having angry outbursts when she becomes frustrated, and there was evidence that she upset the child by having these outbursts in his presence. Respondent Berlin was unable to intervene, and had no strategies of his own for dealing with respondent Furgason's angry outbursts.

When respondents began to have unsupervised visits, respondent Furgason had screaming fits whenever the caseworker tried to discuss important matters, such as the child's schedule or diet. Respondent Berlin's stepmother observed respondent Furgason having screaming fits at respondent Berlin when the child was in the house, and the child seemed to withdraw or become upset. The child displayed signs of emotional distress on returning from unsupervised visits with respondents, such as aggression, agitation, exhaustion, and diarrhea. The child's health care providers tried to rule out physical causes of the diarrhea, including contaminated well water, exposure to an iguana, and excessive juice consumption. Although these possible physical causes were removed, the problem persisted, suggesting that it was caused by psychological distress.

There was very little direct evidence of how respondents cared for and interacted with the child during the unsupervised visitation. The caseworker dropped him off and picked him up, so her testimony mainly concerned respondent Furgason's attitude toward herself rather than toward the child. Geri Furgason, Dawn Carpenter, and other relatives and friends testified about respondents' interactions with the child during the visits, but even the most critical of these witnesses mainly concentrated on Furgason's attitude toward the caseworker and respondent Berlin. However, the testimony of the various mental health professionals, considered as a whole, supports an inference that respondents were not providing proper care during the unsupervised visits. This inference is consistent with evidence that respondents previously failed to provide proper care for the child.

Dr. Jalovaara testified that the child had an aversion to respondent Furgason, and that a child's aversion to a parent usually is an indicator of ongoing abuse or neglect in the relationship. Randall Christensen testified that respondent Furgason displays histrionic personality tendencies, and has an immature concept of how her actions affect other persons. The trial court could infer from this evidence that respondent Furgason never resolved her past history of angry outbursts, especially when she becomes frustrated or overwhelmed by childcare responsibilities. The child's emotional distress following the visits also indicated that this history was continuing into the unsupervised visitation period. This evidence is sufficient to indicate that respondents failed to provide proper care and custody for the child, even after completing several services, and that the child would likely be harmed if he remained in their care. The evidence concerning respondents' mental conditions, coupled with the concrete evidence of the child's behavior, and the concrete evidence of respondents' past deficiencies as parents, permitted the trial court to conclude that respondents' parental deficiencies were continuing.

This evidence implicates respondent Berlin as well as respondent Furgason. Although there was evidence that the child had a healthy bond with respondent Berlin, and the evidence failed to indicate that respondent Berlin engaged in the same sort of behavior that traumatized the child, several witnesses testified that respondent Berlin took only a passive role in the child's care, that respondent Furgason often became angry and frustrated with respondent Berlin's indolence, and that respondent Berlin reacted to respondent Furgason's outbursts by withdrawing. Moreover, there was substantial testimony that respondent Berlin is unable to meet his own basic needs of food and hygiene, and that he is emotionally dependent on respondent Furgason. Respondent Berlin failed to permanently separate himself from respondent Furgason, even though he allegedly believed that petitioner would return the child to his care if he did so. Respondent Berlin's own testimony about his GED programs revealed that he cannot take initiative in formulating and working toward realistic goals. The evidence established that respondent Berlin cannot parent the child with respondent Furgason, and cannot do it without her.

The evidence also supports termination of respondents' parental rights under § 19b(3)(j). Indeed, the evidence established that the child had already suffered severe emotional distress from his visits, so he would be likely to suffer additional harm if he lived with them full time.

Both respondents emphasize that they successfully completed services, which they argue should preclude termination of their parental rights. However, physical compliance with services is not proof of adequate parenting ability unless the parent actually benefits from the services and changes his or her harmful parenting behaviors. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Furthermore, the witnesses who provided the services gave lukewarm appraisals of respondents' progress, and the most positive of these witnesses never actually observed respondents with the child.

Respondent Berlin argues that there was insufficient evidence that his mental status affected his parenting ability. We disagree. Christensen testified that the combination of low intelligence and narcissistic and anti-social personality traits would likely prevent respondent Berlin from adequately functioning as a parent. Although Christensen acknowledged that he was uncertain how respondent Berlin's personality traits actually affected his parenting, respondent Berlin's history indicated that these traits rendered him a passive, indolent person who cannot take initiative to accomplish even minor goals. Christensen's evaluation of respondent Berlin's personality was entirely consistent with respondent Berlin's failure to handle his own money, complete a GED, react to his girlfriend's angry outbursts, and maintain personal care. Thus, contrary to respondent Berlin's argument, there was sufficient evidence that his mental status had an adverse effect on his ability to care for the child.

Respondent Berlin also argues that there was insufficient evidence that the child's illnesses were caused by exposure to respondents' home. Although there was no direct evidence that the child's diarrhea was caused by emotional trauma, the evidence ruled out the most likely physical factors. The timing of the diarrhea episodes, however, permits the inference that they were linked to the child's experiences in respondents' home. Although respondents testified that the child often came to them with diarrhea, the trial court was not obligated to give credence to this testimony.

Respondent Berlin also argues that the trial court erred in denying his motion for appointment of an independent psychological expert to evaluate his mental status. We disagree. Respondent Berlin failed to demonstrate that he was likely to benefit from an independent examination. *People v Jacobsen*, 448 Mich 639, 640; 532 NW2d 838 (1995).

Respondent Furgason argues that the termination decision was unjustified because she was making good progress toward reunification until petitioner abruptly moved to suspend the child's return in April 2005. Although respondent Furgason may have been confused and hurt by this decision, the trial court was not obligated to continue the move toward reunification as more evidence emerged regarding the child's reactions to the visits and respondents' mental health issues, including the evaluations by Dr. Jalovaara, Christensen, and Dr. Colleen Noble.

Respondent Furgason also argues that the trial court erred in discrediting Trisha Pries's positive testimony regarding Furgason's progress in therapy. However, this Court generally defers to the trial court's findings regarding witness credibility. *In re Miller, supra* at 337. Moreover, Pries's supervisors testified that Pries's perception of the situation was unreliable because she lost objectivity and allowed respondent Furgason to manipulate her into siding with her patient against the caseworker. Indeed, Pries herself testified that respondent Furgason tried to manipulate the therapy relationship, and that persons with borderline personality traits are prone to employ this sort of "triangulation." Accordingly, the trial court did not clearly err in rejecting Pries's testimony.

For these reasons, the trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were each established by clear and convincing evidence.

Affirmed.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello